

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #10	CCRB Case #: 202006177	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 08/08/2020 7:20 PM, Saturday, 08/08/2020 8:00 PM	Location of Incident: 1716 Utica Avenue and the 67th Precinct stationhouse	Precinct: 67	18 Mo. SOL 2/8/2022	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 08/11/2020 10:29 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/14/2020 8:45 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. PO Hugo Gutierrez	10892	966092	067 PCT
2. Officers			
3. POM Nicholas Harripersad	21329	965172	067 PCT
4. LT Brian Schulman	00000	939435	NARCBSI
5. PO Daniel Diaz	08295	960457	063 PCT
6. PO Michael Cioffi	24252	963217	063 PCT
7. PO John Brennan	12838	960275	063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Larry Feng	29929	965087	067 PCT
2. POM Vladimir Pena	06855	964698	067 PCT
3. POM Dennis Wu	18327	961463	067 PCT
4. POM Ronel Ruiz	19682	959170	067 PCT
5. POM Steven Tejada	11253	966364	067 PCT
6. POM Brian Williams	09001	966395	067 PCT
7. POM Christian Perez	14888	966266	067 PCT
8. POM Dennis Diaz	01270	966541	067 PCT
9. POM Michael Bravo	30647	964941	067 PCT
10. POM Ali Alomaisi	23797	962918	063 PCT
11. POM Ardit Ymeri	19585	959391	063 PCT
12. LT Darren Rock	00000	927433	063 PCT
13. POM Paul Dopyera	30985	968382	063 PCT
14. PO Victor Depaz	00176	951676	063 PCT
15. PO Thomas Matera	14677	960900	063 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Brian Schulman	Abuse: At 1716 Utica Avenue in Brooklyn, Lieutenant Brian Schulman stopped § 87(2)(b)	
B.PO Daniel Diaz	Abuse: At 1716 Utica Avenue in Brooklyn, Police Officer Daniel Diaz frisked § 87(2)(b)	
C.PO John Brennan	Abuse: At 1716 Utica Avenue in Brooklyn, Police Officer John Brennan frisked § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
D.PO Daniel Diaz	Abuse: At 1716 Utica Avenue in Brooklyn, Police Officer Daniel Diaz searched § 87(2)(b)	
E.PO John Brennan	Abuse: At 1716 Utica Avenue in Brooklyn, Police Officer John Brennan searched § 87(2)(b)	
F.PO Michael Cioffi	Abuse: At 1716 Utica Avenue in Brooklyn, Police Officer Michael Cioffi searched the vehicle in which § 87(2)(b) was an occupant.	
G.LT Brian Schulman	Abuse: At 1716 Utica Avenue in Brooklyn, Lieutenant Brian Schulman searched the vehicle in which § 87(2)(b) was an occupant.	
H.PO Hugo Gutierrez	Abuse: At the 67th Precinct stationhouse in Brooklyn, Police Officer Hugo Gutierrez searched the vehicle in which § 87(2)(b) was an occupant.	
I.POM Nicholas Harripersad	Abuse: At the 67th Precinct stationhouse in Brooklyn, Police Officer Nicholas Harripersad searched the vehicle in which § 87(2)(b) was an occupant.	
J. Officers	Abuse: At the 67th Precinct stationhouse in Brooklyn, officers damaged § 87(2)(b)'s property.	

Case Summary

On August 11, 2020, § 87(2)(b) called IAB to file the following complaint. On September 14, 2020, IAB forwarded this complaint (with original log number 20-19812) to the CCRB. On January 6, 2021, this complaint was reassigned from Inv. Hartford to Inv. Garfield.

On August 8, 2020, at approximately 7:20 p.m., § 87(2)(b) was in his vehicle parked at 1716 Utica Avenue in Brooklyn when Lieutenant Brian Shulman, of 755 Command, instructed officers to stop him and have him exit his parked vehicle (**Allegation A: Abuse of Authority – Stop**, § 87(2)(g) PO John Brennan and PO Daniel Diaz, both of the 63rd Precinct, frisked § 87(2)(b) (**Allegations B and C: Abuse of Authority – Frisk**, § 87(2)(g) PO Brennan and PO Diaz allegedly searched § 87(2)(b) (**Allegations D and E: Abuse of Authority – Search (of person)**, § 87(2)(g) § 87(2)(b).

PO Michael Cioffi (also of the 63rd Precinct) and Lieutenant. Shulman both searched § 87(2)(b)'s vehicle (**Allegations F and G: Abuse of Authority – Vehicle search**, § 87(2)(g) § 87(2)(b). Additional officers from the 63rd Precinct responded and witnessed the incident, including PO Ali Alomaisi, PO Ardit Ymeri, PO Victor Depaz, PO Thomas Matera, Lieutenant. Darren Rock, and PO Paul Dopyera.

Officers from the 67th Precinct also responded, including PO Hugo Gutierrez, PO Nicholas Harripersad, PO Larry Feng, PO Vladimir Pena, PO Dennis Wu, PO Ronel Ruiz, PO Steven Tejada, PO Brian Williams, PO Christian Perez, and PO Dennis Diaz. § 87(2)(b) was placed under arrest following a positive identification by a witness brought to the scene by officers.

§ 87(2)(b) was taken to the 67th Precinct stationhouse where, on the same date, at approximately 8:00 p.m., PO Gutierrez, and PO Harripersad conducted an inventory search of his vehicle (**Allegations H and I: Abuse of Authority – Vehicle Search**, § 87(2)(g) § 87(2)(b) upon receiving his vehicle after the incident, alleged that the vehicle's bumper was scratched (**Allegation J: Abuse of Authority – Property damage**, § 87(2)(g) § 87(2)(b)).

§ 87(2)(a) 160.50

The investigation received BWC footage from PO Brennan, PO Cioffi, PO Diaz, PO Alomaisi, PO Ymeri, PO Matera, PO Depaz, PO Gutierrez, PO Harripersad, PO Feng, PO Pena, PO Wu, PO Ruiz, PO Tejada, PO Williams, and PO Perez (**BRs 10-17**). Relevant portions will be discussed below.

Findings and Recommendations

Allegation (A) Abuse of Authority: At 1716 Utica Avenue in Brooklyn, Lieutenant Brian Schulman stopped § 87(2)(b)

Allegation (B) Abuse of Authority: At 1716 Utica Avenue in Brooklyn, Police Officer Daniel Diaz frisked § 87(2)(b)

Allegation (C) Abuse of Authority: At 1716 Utica Avenue in Brooklyn, Police Officer John Brennan frisked § 87(2)(b)

Allegation (D) Abuse of Authority: At 1716 Utica Avenue in Brooklyn, Police Officer Daniel Diaz searched § 87(2)(b)

Allegation (E) Abuse of Authority: At 1716 Utica Avenue in Brooklyn, Police Officer John Brennan searched § 87(2)(b)

In PO Cioffi's BWC (**BRs 11, 12**), at the 01:08 minute mark, Lieutenant Shulman is approaching § 87(2)(b)'s vehicle and says, "Pull him out" to PO Diaz and PO Brennan. Since Lieutenant Shulman was the highest-ranking officer on scene and is heard instructing officers to take § 87(2)(b) out of his vehicle, **Allegation A** was pleaded only against him. In the video, § 87(2)(b) appears to be a black, wearing a red t-shirt with black stripes, blue jeans, with a

medium build, mid-thirties, and with short hair under a baseball cap.

§ 87(2)(b) provided an IAB intake (**BR 01**) and CCRB phone (**BR 02**) statement in which he consistently stated that he was stopped in his vehicle in the confines of the 67th Precinct.

He provided additional details in his CCRB phone statement. He said on the day of the incident, he was wearing blue jeans, a short-sleeved shirt, and blue Nike sneakers. He was also driving a 2015 black Maserati § 87(2)(b) with the license plate number § 87(2)(b). He was parked outside of 1716 Utica Avenue when he noticed that six officers had surrounded his vehicle. An officer in a white shirt (identified by the investigation as Lieutenant. Shulman) told § 87(2)(b) to get out of his vehicle. § 87(2)(b) stated that as he spoke with Lieutenant Shulman, an officer entered his pants pockets and patted down his back, beltline, and pants. He said the officer did the same process twice and then stepped back.

PO Diaz (**BR 03**) stated that he and PO Brennan received a radio run reporting a male with a firearm travelling southbound on Utica Avenue in Brooklyn. The radio run gave a description of the male, a description of the vehicle he was driving, and the vehicle's license plate. PO Diaz could not recall the descriptions specifically. He and PO Brennan spotted the vehicle parked in a parking lot on the intersection of Utica Avenue and Avenue I. PO Diaz asked over the radio for a confirmation of the description of the vehicle and of the male (identified by the investigation as § 87(2)(b)) before approaching. Once confirmed, PO Diaz and PO Brennan parked their vehicle in the parking lot and approached § 87(2)(b). PO Diaz stated that he and PO Brennan approached the driver's side of § 87(2)(b)'s vehicle. They asked § 87(2)(b) to step out of the vehicle (PO Diaz could not recall who asked specifically). PO Diaz then frisked § 87(2)(b)'s pants down to his shoes by patting the outside of them. He did not enter § 87(2)(b)'s pockets. PO Diaz said the purpose of the frisk was to ensure that § 87(2)(b) did not have a firearm or other weapon on him. PO Diaz did not observe PO Brennan frisk § 87(2)(b).

PO Brennan (**BR 04**) gave a statement consistent with PO Diaz's with the following exceptions. He stated he also frisked § 87(2)(b) specifically the right pants leg, while PO Diaz frisked the left pants leg.

PO Alomaisi (**BR 07**) and PO Ymeri (**BR 08**) were interviewed prior to PO Diaz and PO Brennan being identified in this investigation. They both provided statements consistent with the other officers interviewed, with generally less information recalled. They could not recall § 87(2)(b) being searched by officers.

Due to PO Diaz and PO Brennan's statements and BWC footage, the investigation determined it unnecessary to interview Lieutenant Shulman as his statement would not affect the recommended dispositions.

In PO Diaz's BWC (**BRs 11, 12**), PO Diaz and PO Cioffi are the first two officers to approach the driver's side of § 87(2)(b)'s vehicle. At 1:08, PO Cioffi opens the door and tells § 87(2)(b) to step out of the vehicle. At 1:13, PO Diaz frisks § 87(2)(b)'s left leg. He is not seen searching § 87(2)(b)'s pockets, but the video is not comprehensive. § 87(2)(b)'s legs are not visible on camera during what would have been the alleged search.

In PO Brennan's BWC (**BRs 11, 12**), at 1:20, PO Brennan frisks § 87(2)(b)'s right leg. He is not seen searching § 87(2)(b)'s pockets, but the video is not entirely comprehensive. § 87(2)(b)'s legs are not visible on camera during what would have been the alleged search.

The investigation obtained a 911 call in which a woman who identifies herself as § 87(2)(b) tells the 911 operator that a man in front of 848 Utica Avenue is threatening people with a gun that he obtained from the trunk of his vehicle. She provides the man's license plate number, § 87(2)(b) and describes the vehicle as a "small black sedan." She describes the man as black, wearing a red t-shirt with black stripes, blue jeans, 5'6" tall, medium build, mid-thirties, and short hair (**BRs 18, 19**).

The investigation also obtained police radio communications in which the 911 operator relays the following information at 00:40: "[inaudible] 10-10 with a firearm, 848 Utica, 848 Utica, Linden and Church. Male holding a gun at the location, drove off in a black sedan. License plate

§ 87(2)(b) [inaudible]". At 4:00, the operator confirms the license plate number and adds that the vehicle was described as "black Maserati." (BRs 18, 19).

In People v. Marley, 201 A.D.2d 925 (1994) (BR 20), the court found that upon observing a vehicle matching the make, model, and color of that involved in a crime, one-half to three-quarters of a mile from the scene of crime, and 15 minutes from the time the crime was committed, officers had reasonable suspicion to stop the vehicle.

In People v. Gonzalez, 138 A.D.2d 622 (1988) (BR 21), the court held that an eyewitness-victim of a crime can provide probable cause for the arrest of the assailant despite the fact that their reliability has not been previously established or their information corroborated.

§ 87(2)(g)

In People v. Forbes, 183 Misc. 2d 613 (BR 28), the court found that it is unreasonable to deny a police officer the right to neutralize the threat of physical harm when he possesses an articulable reasonable suspicion that an individual whom he is investigating at close range is armed and presently dangerous.

§ 87(2)(g)

Allegation (F) Abuse of Authority: At 1716 Utica Avenue in Brooklyn, Police Officer Michael Cioffi searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (G) Abuse of Authority: At 1716 Utica Avenue in Brooklyn, Lieutenant Brian Schulman searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(g), § 87(2)(a) 160.50

In his IAB statement (BR 01), § 87(2)(b) disputed his vehicle being searched, but in his CCRB phone statement (BR 02) he said that he offered without prompting to let the officers search his car. He also stated that he was parked in a 2015 black Maserati § 87(2)(b) with the license plate number § 87(2)(b) when officers first approached him.

§ 87(2)(g)

In PO Cioffi's BWC (BRs 11, 12), at 1:20, PO Cioffi leans into § 87(2)(b)'s vehicle while he is being frisked by PO Diaz and PO Brennan. He does not appear to touch anything and steps away from the vehicle at 1:24. At 2:25, § 87(2)(b) explicitly gives the officers consent to search his entire vehicle. At 3:00, PO Cioffi and Lieutenant Schulman begin to search § 87(2)(b)'s vehicle.

The investigation obtained the 911 call in which a woman who identifies herself as § 87(2)(b) tells the 911 operator that a man in front of 848 Utica Avenue is threatening people with a gun that he obtained from the trunk of his vehicle. She provides the man's license plate number, § 87(2)(b) and describes the vehicle as a "small black sedan." She describes the man as black, wearing a red t-shirt with black stripes, blue jeans, 5'6" tall, medium build, mid-thirties, and short hair (BRs 18, 19).

In People v. Gonzalez, 138 A.D.2d 622 (1988) (BR 21), the court held that an eyewitness-

victim of a crime can provide probable cause for the arrest of the assailant despite the fact that their reliability has not been previously established or their information corroborated.

In People v. Portelli, 116 A.D.3d 1163, (BR 27), the court held that the automobile exception to the warrant requirement permits a search of a vehicle where there is probable cause to believe that contraband or evidence of a crime will be found inside.

§ 87(2)(g)

Allegation (H) Abuse of Authority: At the 67th Precinct stationhouse in Brooklyn, Police Officer Hugo Gutierrez searched the vehicle in which § 87(2)(b) was an occupant.
Allegation (I) Abuse of Authority: At the 67th Precinct stationhouse in Brooklyn, Police Officer Nicholas Harripersad searched the vehicle in which § 87(2)(b) was an occupant.
Allegation (J) Abuse of Authority: At the 67th Precinct stationhouse in Brooklyn, officers damaged § 87(2)(b) s property.

§ 87(2)(a) 160.50

In his intake statement, § 87(2)(b) said that officers took his vehicle following his arrest and, following his release, found the fender on the front-passenger side scratched (BR 01). In his CCRB statement, § 87(2)(b) stated that the bumper was scratched (BR 02).

PO Gutierrez (BR 05) and PO Harripersad (BR 06) both consistently stated that they took part in the inventory search of § 87(2)(b) s vehicle. Neither officer recalled scratching § 87(2)(b) s bumper.

A review of PO Gutierrez's 5th BWC (BRs 11, 17) shows PO Gutierrez and PO Harripersad searching § 87(2)(b) s vehicle. They remove all personal belongings of § 87(2)(b) s and place them into large garbage bags. At no point does either officer appear to damage the front passenger fender. The video showed PO Gutierrez opening various compartments in the vehicle, but he does not appear to cause any damage while doing so.

In People v. Padilla, 21 N.Y.3d 268 (2013) (BR 24) the court found that an inventory search of a vehicle, following a lawful arrest of a driver of a vehicle that is required to be impounded, was permissible as the search was in accordance with police procedure, resulted in a meaningful inventory list, and the primary objective was to preserve the property of the defendant, protect the police from a claim of lost property, and protect police and others from dangerous instruments.

Patrol Guide Procedure 218-13 (BR 25) states that whenever property comes into the custody of the Department, all valuables inventoried from a vehicle must be removed and invoiced in a property voucher. This search should include any area that may contain valuables. The Patrol Guide also states that officers must "Force open trunk, glove compartment, etc. only if it can be done with minimal damage."

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 26**).
- Lieutenant Shulman has been a member-of-service for sixteen years and has been a subject of eleven CCRB complaints and 27 allegations, three of which were substantiated.
 - 201305459 involved an allegation of property damage and of a stop, both of which were unsubstantiated, and one discourtesy allegation that was substantiated. The NYPD penalty was instructions.
 - 201400712 involved an allegation of a frisk that was substantiated. The NYPD penalty was instructions.
 - 201910390 involved an allegation of a seizure of property that was substantiated. The Board recommended charges, and the NYPD has yet to come to a disposition.
 - § 87(2)(g)
- PO Diaz has been a member of service for six years and has been a subject of one CCRB complaint and one allegation which was not substantiated.
- PO Brennan has been a member of service for six years and has been a subject of three CCRB complaints and seven allegations, three of which were substantiated.
 - 201809730 involved an allegation of discourtesy that was closed as substantiated. The NYPD imposed instructions.
 - 201902222 involved two allegations of force, one of a chokehold and one for restricted breathing, both of which were substantiated. The NYPD has yet to come to a disposition.
 - § 87(2)(g)
- PO Gutierrez has been a member of service for three years and has been a subject of one CCRB complaint and one allegation which was not substantiated.
- PO Harripersad has been a member of service for three years and has been a subject of one CCRB complaint and one allegation which was not substantiated.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.

- § 87(2)(b)

(**BR 22**).
- § 87(2)(c)

Squad: 10

Investigator: Carter Garfield Inv. Garfield 3/14/2022
Signature Print Title & Name Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>3/16/2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date